

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201505026	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/11/2015 11:15 AM	Location of Incident: Grand Central Parkway entrance ramp	Precinct: 115	18 Mo. SOL 12/11/2016	EO SOL 12/11/2016	
Date/Time CV Reported Thu, 06/11/2015 11:43 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/19/2015 12:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Rajan	01569	898342	115 PCT
2. POF Lorraine Vultaggio	26668	954412	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Marianna Gentile	02288	938547	115 PCT
2. POM Brett Schantz	12909	947471	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Rajan	Abuse: Sgt. John Rajan threatened § 87(2)(b) with the use of force.	
B.SGT John Rajan	Abuse: Sgt. John Rajan frisked § 87(2)(b)	
C.POF Lorraine Vultaggio	Abuse: PO Lorraine Vultaggio frisked § 87(2)(b)	
D.POF Lorraine Vultaggio	Abuse: PO Lorraine Vultaggio searched § 87(2)(b)	
E.SGT John Rajan	Abuse: Sgt. John Rajan searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POF Lorraine Vultaggio	Abuse: PO Lorraine Vultaggio searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
G.SGT John Rajan	Abuse: Sgt. John Rajan searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with IAB on June 11, 2015. It was received at the CCRB on June 19, 2015.

On June 11, 2015, at approximately 11:15am, § 87(2)(b) was pulled over on the Grand Central Parkway entrance ramp, in the vicinity of Ditmars Boulevard in Queens, by Sgt. John Rajan and PO Lorraine Vultaggio of the 115th Precinct. Sgt. Rajan allegedly told § 87(2)(b) “If you keep talking to me like that, you’re going to end up on the floor!” (**Allegation A**). Sgt. Rajan then instructed § 87(2)(b) to exit his vehicle before allegedly frisking him (**Allegation B**).

PO Vultaggio, who stood on the passenger side of the vehicle, allegedly frisked and searched § 87(2)(b) who was seated in the passenger seat (**Allegations C and D**). While § 87(2)(b) and § 87(2)(b) waited at the rear of the vehicle, Sgt. Rajan and PO Vultaggio allegedly searched § 87(2)(b)’s vehicle (**Allegations E and F**). Once the search was complete and the occupants were returned to the vehicle, Sgt. Rajan then allegedly opened the driver’s side door and photographed the interior of § 87(2)(b)’s vehicle (**Allegation G**), after which point § 87(2)(b) was issued a summons for making an unsafe lane change.

Mediation, Criminal and Civil Histories

- Mediation was offered to § 87(2)(b) during both his telephone statement and his sworn statement, and he rejected it on the ground that he wanted the officers disciplined.
- According to the New York State Office of Court Administration database, § 87(2)(b) has no prior criminal convictions.
- A FOIL request was filed on August 17, 2015, the results of which indicated that no notices of claim were filed in regard to this incident (BR 11).

Civilian and Subject Officer CCRB Histories

- This is § 87(2)(b) and § 87(2)(b)’s first CCRB complaint (BR 10, BR 9).
- Sgt. Rajan has been a member of the NYPD for 24 years and has been the subject of 53 prior CCRB allegations involving 17 cases. Of those 53 allegations, seven were vehicle search allegations, and a distinct seven were frisk allegations. In total, six allegations have been substantiated against Sgt. Rajan: case number 200710212 (vehicle search and frisk), 200803734 (vehicle stop, frisk, search of person), and 200803831 (frisk). Seventeen of the allegations pled against Sgt. Rajan were closed as either unsubstantiated or were truncated without a full investigation, and three allegations remain under investigation. Case number 200803734 involves circumstances similar to the case here, and will be further discussed in Allegation E.
- PO Vultaggio has been an NYPD officer for two years and this is her first CCRB complaint.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) who provided only an unverified telephone statement, alleged that an officer frisked and searched him upon stepping out of the vehicle. Although he stated that PO Vultaggio

was the officer instructing him to exit the vehicle, he was unsure whether she had been the same officer to frisk and search him. PO Vultaggio acknowledged being the only officer interacting with § 87(2)(b) both PO Brett Schantz and PO Marianna Gentile, who arrived to serve as backup for the vehicle stop, stated that they took purely observatory roles – a claim that all parties corroborated. Based on these findings, the frisk and search of § 87(2)(b) is therefore pled against PO Vultaggio.

Allegation A – Abuse of Authority: Sgt. John Rajan threatened § 87(2)(b) with the use of force.

It is undisputed that Sgt. Rajan, after having already obtained § 87(2)(b)'s paperwork, returned to § 87(2)(b)'s vehicle, opened the door and instructed § 87(2)(b) to step out. § 87(2)(b) did so.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that Sgt. Rajan appeared at his door and attempted to open it, but found it locked. He then instructed § 87(2)(b) to open the door, but § 87(2)(b) refused to do so until he knew why he had been pulled over. § 87(2)(b) testified that Sgt. Rajan told him to open the door four or five times before finally telling § 87(2)(b) “If you keep talking to me like that, you’re going to end up on the floor”(BR 1).

§ 87(2)(b)'s friend who was seated in the front passenger seat, stated in an unverified telephone statement that he heard Sgt. Rajan say to § 87(2)(b) “If you continue to talk like this, you’ll be on the ground”(BR 2).

Sgt. Rajan denied having made this statement to § 87(2)(b). He further testified that § 87(2)(b) was compliant in stepping out of the vehicle, though he stated that § 87(2)(b) was “combative” insofar as he said, “I got nothing, you can search my car if you’d like”(BR 5).

PO Vultaggio, PO Schantz, and PO Gentile all testified that they did not hear Sgt. Rajan make this statement to § 87(2)(b). All three of them, however, noted that they were unable to hear the conversation occurring between Sgt. Rajan and § 87(2)(b) due to a combination of the Grand Central Parkway noisiness and their relative distances from Sgt. Rajan and § 87(2)(b) (BR 6-8).

The video that § 87(2)(b) provided does not capture this allegation, as it was recorded after both passengers were returned to the vehicle, but it does capture a verbal rehashing of the allegation. Specifically, at 1:23 on the video, § 87(2)(b) says to Sgt. Rajan, “Listen, I gave you nothing but respect...and as soon as I get out the car, ‘oh, watch how you talk to me before you end up on the floor!’[Sgt. Rajan, here, is seen nodding in apparent acknowledgement], like how you talking to me like that?” Sgt. Rajan replies, “Have you ever been arrested before?”(BR 3, BR 4).

An officer may make a threat of force, if not egregious, only when it performs a legitimate police function, particularly if it is used in lieu of further escalation of violence. NYPD v. Briscoe, OATH No. 1328/00 (BR 14).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: Sgt. John Rajan frisked § 87(2)(b)

It is undisputed that, after § 87(2)(b) stepped out of his vehicle, Sgt. Rajan frisked him. § 87(2)(b)

§ 87(2)(b) alleged that the frisk occurred and Sgt. Rajan acknowledged performing it. § 87(2)(g)

Sgt. Rajan testified that, upon approaching § 87(2)(b)'s vehicle from the rear, he observed § 87(2)(b) reach his hands one time toward the center console before returning his hands to his torso area. He also testified that he felt uneasy because all of the car windows, except for the windshield, were tinted. He decided to frisk § 87(2)(b) who was wearing baggy pants that “were drooping below his ass.” Although Sgt. Rajan was unable to further describe them, he explained that such pants often conceal weapons. He did not observe a bulge on § 87(2)(b)'s person, but rather frisked him for weapons on the basis of the prior movement as well as the bagginess of the pants (BR5).

PO Vultaggio testified that she did not observe any furtive movements herself, but that Sgt. Rajan informed her during the stop that he had seen such a movement (BR 6).

Officers must have reasonable suspicion that a person is armed in order to perform a frisk. People v. DeBour, 40 N.Y.2d 210 (1976) (BR 15).

§ 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: PO Lorraine Vultaggio frisked § 87(2)(b)

Allegation D – Abuse of Authority: PO Lorraine Vultaggio searched § 87(2)(b)

§ 87(2)(b) alleged in an unverified telephone statement that PO Vultaggio asked him to step out of the vehicle, frisked him, and searched his pockets (BR 2).

§ 87(2)(b) was unable to observe what was occurring on § 87(2)(b)'s side of the vehicle, but stated that § 87(2)(b) had later told him that he was searched at this point in the incident (BR 1).

PO Vultaggio stated that she did not recall whether she frisked § 87(2)(b) after he exited the vehicle, but testified that she did not search him. Both she and Sgt. Rajan consistently stated that § 87(2)(b) appeared to be nervous from the onset of their approach, as he was sweating, staring straight ahead, and that his heart could be seen pounding through his shirt (BR 5, BR6). PO Vultaggio, though she did not acknowledge frisked § 87(2)(b) and denied searching him, explained that there was “something off” about § 87(2)(b)'s nerves, as “there was no reason to be nervous” (BR 6).

Neither Sgt. Rajan, nor PO Schantz or PO Gentile, who arrived to serve as backup, observed PO Vultaggio frisk or search § 87(2)(b) (BR 5, BR 7, BR 8).

Officers must have reasonable suspicion that a person is armed in order to perform a frisk. People v. DeBour 40 N.Y.2d 210 (1976)(BR 15). Nervousness alone does not provide a basis for reasonable suspicion of criminality. People v. Banks, 85 N.Y. 2d 558, 650 (1995)(BR 12).

§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Sgt. John Rajan searched § 87(2)(b)'s vehicle.
Allegation F – Abuse of Authority: PO Lorrain Vultaggio searched § 87(2)(b)'s vehicle.
It is undisputed that Sgt. Rajan and PO Vultaggio searched § 87(2)(b)'s vehicle after both occupants had been removed. § 87(2)(b) and § 87(2)(b) reported that a vehicle search occurred, and Sgt. Rajan and PO Vultaggio acknowledged conducting it. § 87(2)(g)

As Sgt. Rajan stood outside of the vehicle asking § 87(2)(b) for his license and registration, Sgt. Rajan testified that he detected a slight odor of marijuana emanating from the vehicle. Sgt. Rajan stated that, prior to frisking § 87(2)(b) he informed § 87(2)(b) that he had smelled marijuana. § 87(2)(b) replied, “I got nothing, you can search my car if you like.” Sgt. Rajan and PO Vultaggio then searched § 87(2)(b)'s vehicle, looking under the seats, inside of the middle console, and inside of the unlocked glove compartment (BR 5).

§ 87(2)(b) testified that Sgt. Rajan never requested consent to search his vehicle, nor did § 87(2)(b) ever give it. PO Vultaggio, PO Schantz, and PO Gentile, each testified that they never heard Sgt. Rajan ask § 87(2)(b) for consent (BR 6-8).

The video footage, which captures a conversation between Sgt. Rajan and § 87(2)(b) after the search concluded, nevertheless supports § 87(2)(b)'s claim that Sgt. Rajan never requested or obtained consent to search his vehicle. At 0:34 on the video, § 87(2)(b) states, "You keep talking to me like I'm some random punk on the street. Like, I gave you respect. You didn't even ask me to search my vehicle!" (BR 3, BR 4)). Sgt. Rajan does not respond to this accusation, but simply closes the door and leaves the frame, returning again at 0:46. § 87(2)(b), § 87(2)(g)

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Although Sgt. Rajan testified that he detected the odor of marijuana, PO Vultaggio (who was equally proximate and remained for an equal duration of time as did Sgt. Rajan) testified that, aside from hearing about § 87(2)(b)'s earlier movement, there was no other reason she suspected either of the occupants of having drugs or a weapon. PO Schantz and PO Gentile, who were on scene for approximately ten minutes, both testified that they did not detect any odors coming from the vehicle (BR 6-8).

Motioning as if to place an object in the back seat is insufficient basis for searching the vehicle. People v. Chann, 221, A.D.2d 155 (1995)(BR 13).

§ 87(2)(b), § 87(2)(g)

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Allegation G – Abuse of Authority: Sgt. John Rajan searched § 87(2)(b)'s vehicle.

It is undisputed that, after returning both passengers to the vehicle, Sgt. Rajan returned to the driver's side and engaged in conversation with § 87(2)(b) regarding the origin of his vehicle. During their conversation, Sgt. Rajan opened the driver side door and took photographs of the car's vehicle identification number (VIN) using his personal cell phone. These events are captured on the video provided by § 87(2)(b) and Sgt. Rajan acknowledged having taken these actions (BR 3-5).

Sgt. Rajan explained that, after having observed § 87(2)(b)'s Florida state dealer license plates, his suspicion arose regarding the vehicle's ownership. He therefore opened the door to view the

VIN, which is affixed to the door well. He explained that he photographed the VIN because it was positioned in such a way that he could not otherwise view it; after examining the photographs, he recognized that the VIN was out-of-state, and that he therefore would not be able to verify its ownership status through New York State database searches, so he deleted the photographs (BR 5).

In the video, Sgt. Rajan asks § 87(2)(b) whether he has the title of the vehicle. § 87(2)(b) replies that he does not and that the vehicle had been salvaged, then opens the door for Sgt. Rajan at 0:08 on the recording, saying, “You want the VIN? The VIN is right here,” and appears to be gesturing toward a specific location on the interior of the door area. The door remains open until 0:40, and in the interim, Sgt. Rajan is seen photographing what is presumably the VIN (BR 3-4).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

Pod: 15

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date